

Senate File 43 - Introduced

SENATE FILE 43
BY SCHOENJAHN

A BILL FOR

1 An Act relating to the protection and care of pioneer
2 cemeteries.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 523I.316, Code 2011, is amended to read
2 as follows:

3 **523I.316 Protection of cemeteries, pioneer cemeteries, and**
4 **burial sites.**

5 1. *Existence of cemetery, pioneer cemetery, or burial site*
6 *— notification.* If a governmental subdivision is notified of
7 the existence of a cemetery, a pioneer cemetery, or a marked
8 burial site that is not located in a dedicated cemetery, within
9 its jurisdiction and the cemetery, pioneer cemetery, or burial
10 site is not otherwise provided for under this chapter, the
11 governmental subdivision shall, as soon as is practicable,
12 notify the owner of the land upon which the cemetery, pioneer
13 cemetery, or burial site is located of the cemetery's, pioneer
14 cemetery's, or burial site's existence and location. The
15 notification shall include an explanation of the provisions of
16 this section. If there is a basis to believe that interment
17 may have occurred more than one hundred fifty years earlier,
18 the governmental subdivision shall also notify the state
19 archaeologist.

20 2. *Disturbance of interment spaces — penalty.* A person who
21 knowingly and without authorization damages, defaces, destroys,
22 or otherwise disturbs an interment space commits criminal
23 mischief in the third degree. Criminal mischief in the third
24 degree is an aggravated misdemeanor.

25 3. *Duty to preserve and protect.*

26 a. A governmental subdivision having a cemetery, pioneer
27 cemetery, or a burial site that is not located within a
28 dedicated cemetery, within its jurisdiction, for which
29 preservation is not otherwise provided, shall preserve and
30 protect the cemetery, pioneer cemetery, or burial site as
31 necessary to restore or maintain its physical integrity as a
32 cemetery, pioneer cemetery, or burial site. The governmental
33 subdivision may enter into a written agreement to delegate
34 the responsibility for the preservation and protection of
35 the cemetery, pioneer cemetery, or burial site to the owner

1 of the property on which the cemetery, pioneer cemetery, or
2 burial site is located or to a public or private organization
3 interested in historical preservation. The governmental
4 subdivision shall not enter into an agreement with a public
5 or private organization to preserve and protect the cemetery,
6 pioneer cemetery, or burial site unless the property owner has
7 been offered the opportunity to enter into such an agreement
8 and has declined to do so.

9 *b.* A governmental subdivision is authorized to expend public
10 funds, in any manner authorized by law, in connection with such
11 a cemetery, pioneer cemetery, or burial site.

12 *c.* If a governmental subdivision proposes to enter into an
13 agreement with a public or private organization pursuant to
14 this subsection to preserve and protect a cemetery, pioneer
15 cemetery, or burial site that is located on property owned by
16 another person within the jurisdiction of the governmental
17 subdivision, the proposed agreement shall be written, and
18 the governmental subdivision shall provide written notice by
19 ordinary mail of the proposed agreement to the property owner
20 at least fourteen days prior to the date of the meeting at
21 which such proposed agreement will be authorized. The notice
22 shall include the location of the cemetery, pioneer cemetery,
23 or burial site and a copy of the proposed agreement, and
24 explain that the property owner is required to permit members
25 of the public or private organization reasonable ingress
26 and egress for the purposes of preserving and protecting
27 the cemetery, pioneer cemetery, or burial site pursuant to
28 the proposed agreement. The notice shall also include the
29 date, time, and place of the meeting and a statement that the
30 property owner has a right to attend the meeting and to comment
31 regarding the proposed agreement.

32 *d.* (1) Subject to chapter 670, a governmental subdivision
33 that enters into an agreement with a public or private
34 organization pursuant to this subsection is liable for any
35 personal injury or property damage that occurs in connection

1 with the preservation or protection of the cemetery, pioneer
2 cemetery, or burial site or access to the cemetery, pioneer
3 cemetery, or burial site by the governmental subdivision or the
4 public or private organization.

5 (2) For the purposes of this paragraph "d", "liable" means
6 liability for every civil wrong which results in wrongful
7 death or injury to a person or injury to property or injury to
8 personal or property rights and includes but is not restricted
9 to actions based upon negligence; error or omission; nuisance;
10 breach of duty, whether statutory or other duty; or denial or
11 impairment of any right under any constitutional provision,
12 statute, or rule of law.

13 e. A property owner who is required to permit members of a
14 public or private organization reasonable ingress and egress
15 for the purpose of preserving or protecting a cemetery, pioneer
16 cemetery, or burial site on that owner's property and who acts
17 in good faith and in a reasonable manner pursuant to this
18 subsection is not liable for any personal injury or property
19 damage that occurs in connection with the preservation or
20 protection of the cemetery, pioneer cemetery, or burial site or
21 access to the cemetery, pioneer cemetery, or burial site.

22 f. For the purposes of this subsection, reasonable ingress
23 and egress to a cemetery, pioneer cemetery, or burial site
24 shall include the following:

25 (1) A member of a public or private organization that
26 has entered into a written agreement with the governmental
27 subdivision who desires to visit such a cemetery, pioneer
28 cemetery, or burial site shall give the property owner at least
29 ten days' written notice of the intended visit.

30 (2) If the property owner cannot provide reasonable access
31 to the cemetery, pioneer cemetery, or burial site on the
32 desired date, the property owner shall provide reasonable
33 alternative dates when the property owner can provide access
34 to the member.

35 (3) A property owner is not required to make any

1 improvements to that person's property to satisfy the
2 requirement to provide reasonable access to a cemetery, pioneer
3 cemetery, or burial site pursuant to this subsection.

4 4. *Confiscation and return of memorials.* A law
5 enforcement officer having reason to believe that a
6 memorial or memorialization is in the possession of a person
7 without authorization or right to possess the memorial
8 or memorialization may take possession of the memorial or
9 memorialization from that person and turn it over to the
10 officer's law enforcement agency. If a law enforcement agency
11 determines that a memorial or memorialization the agency has
12 taken possession of rightfully belongs on an interment space,
13 the agency shall return the memorial or memorialization to the
14 interment space, or make arrangements with the person having
15 jurisdiction over the interment space for its return.

16 5. *Burial sites located on private property.* If a person
17 notifies a governmental subdivision that a burial site of the
18 person's relative is located on property owned by another
19 person within the jurisdiction of the governmental subdivision,
20 the governmental subdivision shall notify the property owner
21 of the location of the burial site and that the property owner
22 is required to permit the person reasonable ingress and egress
23 for the purposes of visiting the burial site of the person's
24 relative.

25 6. *Pioneer cemeteries located on private property.* If a
26 person notifies a governmental subdivision that the person's
27 relative is interred in a pioneer cemetery on property owned
28 by another person within the jurisdiction of the governmental
29 subdivision, the governmental subdivision shall notify the
30 property owner of the location of the pioneer cemetery and that
31 the property owner is required to permit the person reasonable
32 ingress and egress for the purposes of visiting the burial site
33 of the person's relative.

34 ~~6.~~ 7. *Discovery of human remains.* Any person discovering
35 human remains shall notify the county or state medical examiner

1 or a city, county, or state law enforcement agency as soon as
 2 is reasonably possible unless the person knows or has good
 3 reason to believe that such notice has already been given or
 4 the discovery occurs in a cemetery. If there is reason to
 5 believe that interment may have occurred more than one hundred
 6 fifty years earlier, the governmental subdivision notified
 7 shall also notify the state archaeologist. A person who does
 8 not provide notice required pursuant to this subsection commits
 9 a serious misdemeanor.

10 ~~7.~~ 8. *Adverse possession.* A cemetery or a pioneer cemetery
 11 is exempt from seizure, appropriation, or acquisition of title
 12 under any claim of adverse possession, unless it is shown that
 13 all remains in the cemetery or pioneer cemetery have been
 14 disinterred and removed to another location.

15 Sec. 2. Section 523I.317, Code 2011, is amended to read as
 16 follows:

17 **523I.317 Duty to provide public access.**

18 A cemetery or pioneer cemetery shall provide or permit
 19 public access to the cemetery or pioneer cemetery, at
 20 reasonable times and subject to reasonable regulations, so that
 21 owners of interment rights and other members of the public
 22 have reasonable ingress and egress to the cemetery or pioneer
 23 cemetery.

24 Sec. 3. Section 523I.401, Code 2011, is amended to read as
 25 follows:

26 **523I.401 Neglected cemeteries and pioneer cemeteries.**

27 The commissioner shall create a form that interested persons
 28 may use to report neglected cemeteries and pioneer cemeteries
 29 to the commissioner. The commissioner shall catalog and review
 30 the neglected cemetery and pioneer cemetery reports received
 31 on or before December 31, ~~2007~~ 2011, conduct site visits as
 32 warranted to determine the nature or extent of any neglect, and
 33 publish a report of findings on or before December 31, ~~2008~~
 34 2012.

35 Sec. 4. Section 523I.402, Code 2011, is amended to read as

1 follows:

2 **523I.402 Removal of remains.**

3 1. Upon a showing of good cause, a county cemetery
4 commission may file suit in the district court in that county
5 to have remains interred in a cemetery or pioneer cemetery
6 owned and operated by the commission removed to another
7 cemetery. All persons in interest, known or unknown, other
8 than the plaintiffs, shall be made defendants to the suit. If
9 any parties are unknown, notice may be given by publication.
10 After hearing and a showing of good cause for the removal, the
11 court may order the removal of the remains and the remains
12 shall be properly interred in another cemetery, at the expense
13 of the county. The removal and reinterment of the remains
14 shall be done pursuant to a disinterment permit issued under
15 section 144.34 with due care and decency. In deciding whether
16 to order the removal of interred remains, a court shall
17 consider present or future access to the cemetery or pioneer
18 cemetery, the historical significance of the cemetery or
19 pioneer cemetery, and the wishes of the parties concerned
20 if they are brought to the court's attention, including the
21 desire of any beneficiaries to reserve their rights to waive a
22 reservation of rights in favor of removal, and shall exercise
23 the court's sound discretion in granting or refusing the
24 removal of interred remains.
25 2. Any heir at law or descendent of a deceased person
26 interred in a neglected cemetery or pioneer cemetery may file
27 suit in the district court in the county where the cemetery
28 or pioneer cemetery is located to have the deceased person's
29 remains interred in the cemetery or pioneer cemetery removed to
30 another cemetery. The owner of the land, any beneficiaries of
31 any reservation of rights, and any other persons in interest,
32 known or unknown, other than the plaintiffs shall be made
33 defendants. If any parties are unknown, notice may be given by
34 publication. After hearing and upon a showing of good cause,
35 the court may order removal and the proper interment of the

1 remains in another cemetery, at the expense of the petitioner.
2 The removal and reinterment shall be done with due care and
3 decency.

4 EXPLANATION

5 This bill extends certain protections to pioneer cemeteries
6 that are available to cemeteries. A pioneer cemetery is
7 defined as a cemetery where there were 12 or fewer burials in
8 the preceding 50 years. A pioneer cemetery is specifically
9 excluded from the definition of a cemetery for purposes of
10 cemetery regulation in Code chapter 523I.

11 Code section 523I.316 is amended to require a governmental
12 subdivision that is notified of the existence of a pioneer
13 cemetery that is not otherwise provided for under Code chapter
14 523I to notify the owner of the land upon which the pioneer
15 cemetery is located of its existence and also the state
16 archaeologist if there is a basis to believe that interment
17 may have occurred more than 150 years earlier. A governmental
18 subdivision is also given the duty to preserve and protect a
19 pioneer cemetery or enter into an agreement with the landowner
20 on which the pioneer cemetery is located, or a public or
21 private organization interested in historical preservation, to
22 do so. The governmental subdivision may expend public funds
23 in connection with a pioneer cemetery and is liable, subject
24 to Code chapter 670, for personal injury or property damage
25 that results in connection with the preservation or protection
26 of, or access to, the pioneer cemetery. Reasonable ingress
27 and egress requirements for preservation organizations and
28 relatives of persons interred also apply to pioneer cemeteries.

29 Code section 523I.317 is amended to require that pioneer
30 cemeteries must allow public access to the pioneer cemetery at
31 reasonable times.

32 Code section 523I.401 is amended to require the commissioner
33 of insurance to create a form that interested persons may use
34 to report neglected cemeteries and pioneer cemeteries to the
35 commissioner and requires the commissioner to catalogue and

1 review any neglected cemetery and pioneer cemetery reports
2 received on or before December 31, 2011, conduct site visits
3 as warranted, and publish a report of findings on or before
4 December 31, 2012. These changes update previous provisions
5 which required the commissioner to catalogue and review
6 neglected cemetery reports received on or before December 31,
7 2007, and publish a report of findings before December 31,
8 2008.

9 Code section 523I.402 is amended to allow a county cemetery
10 commission or an heir at law or descendent of a deceased person
11 interred in a pioneer cemetery to file suit in district court
12 to have remains interred in a pioneer cemetery removed to
13 another cemetery.